

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER S.A.S.,
and Merial Limited,

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

C.A. No. 10-cv-274-WO-WWD

MOTION TO FILE DOCUMENTS UNDER SEAL

Plaintiffs BASF AGRO B.V., ARNHEM(NL), WÄDENSWIL BRANCH, BAYER S.A.S., and Merial Limited (hereinafter “Plaintiffs”) hereby move the Court to file under seal the following documents, submitted herewith: (i) the Memorandum Of Law In Opposition To Defendant’s Motion To Strike A Portion Of The Expert Report And The Entire “Supplemental” Expert Report Of Jeffrey Winkler And Preclude Testimony And Evidence, (ii) Exhibits 1-5 filed therewith, (iii) Plaintiffs’ Response To Defendant Cheminova, Inc.’s Objections To Plaintiffs’ Inclusion Of A Late-Submitted Expert Report And Extrinsic Evidence In Support Of Their Proposed Claim Constructions and (iv) Exhibits 1-4 filed therewith.

In support of this Motion, Plaintiffs state as follows:

Plaintiffs entered into a Stipulated Protective Order (“the Protective Order”) entered by the Court on August 27, 2010. [D.I. 40]. Paragraph II.B.1 of the Protective Order defines “confidential information” as “sensitive (1) research, development, or technical information that is not publicly available and provides a technical or commercial advantage to its possessor; or (2) business, financial, or commercial information that is not publicly available and provides a commercial advantage to its possessor.” Paragraph II.B.2 of the Protective Order defines “highly confidential information” as “includ[ing], without limitation, any non-public information concerning the design, development and manufacturing of products, research and development, product analysis, sales and marketing, business relationships, including customers, personnel information, and patents and patent applications.” Paragraphs VIII.A.1 to VIII.A.3 of the Protective Order state that a party must file documents under seal with the Court if it is necessary to submit confidential or highly confidential material.

The Memorandum Of Law In Opposition To Defendant’s Motion To Strike A Portion Of The Expert Report And The Entire “Supplemental” Expert Report Of Jeffrey Winkler And Preclude Testimony And Evidence, Exhibits 1-5 filed therewith, Plaintiffs’ Response To Defendant Cheminova, Inc.’s Objections To Plaintiffs’ Inclusion Of A Late-Submitted Expert Report And Extrinsic Evidence In Support Of Their Proposed Claim Constructions and Exhibits 1-4 filed therewith contain highly confidential information, as defined under the Protective Order, of parties to this litigation and other third parties. While Plaintiffs are committed to the principle that this

judicial proceeding, like any other, should be largely open to the public and on the public record, it is entirely appropriate for the Court to seal information relating to expressly confidential information. Public disclosure of this information may result in harm to Plaintiffs, Defendants, and/or certain third parties. The inability to file such highly confidential information under seal would make it virtually impossible to conduct an action of this nature and would serve no public purpose.

WHEREFORE, Plaintiffs move this Court to file and retain under seal (i) the Memorandum Of Law In Opposition To Defendant's Motion To Strike A Portion Of The Expert Report And The Entire "Supplemental" Expert Report Of Jeffrey Winkler And Preclude Testimony And Evidence, (ii) Exhibits 1-5 filed therewith, (iii) Plaintiffs' Response To Defendant Cheminova, Inc.'s Objections To Plaintiffs' Inclusion Of A Late-Submitted Expert Report And Extrinsic Evidence In Support Of Their Proposed Claim Constructions and (iv) Exhibits 1-4 filed therewith.

Respectfully submitted this 12th day of July, 2011.

/s/ Robert T. Numbers, II
Pressly M. Millen (NCSB No. 16178)
Robert T. Numbers II (NCSB No. 34134)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
150 Fayetteville Street, Suite 2100
P. O. Box 831
Raleigh, NC 27601
Telephone: (919) 755-2100
Facsimile: (919) 755-2150
Email: pmillen@wcsr.com
rnumbers@wcsr.com

Attorneys for Plaintiffs
BASF Agro B.V., Arnhem (NL), Wädenswil Branch
and Bayer S.A.S.

Of Counsel:

Kenneth A. Gallo
Craig Benson
Kent Kemeny
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
2001 K Street NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 223-7420
Email: kgallo@paulweiss.com
cbenson@paulweiss.com
kkemeny@paulweiss.com

John E. Nathan
Catherine Nyarady
Kripa Raman
Brian P. Egan
Jayson L. Cohen
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: jnathan@paulweiss.com
cnyarady@paulweiss.com
kraman@paulweiss.com
began@paulweiss.com
jlcohen@paulweiss.com

Robert J. Koch
MILBANK, TWEED, HADLEY & MCCLOY LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
Telephone: (202) 835-7500
Facsimile: (202) 835-7586
Email: rkoch@milbank.com

/s/ Jitendra Malik, Ph.D.
Jitendra Malik, Ph.D. (NCSB No. 32809)
ALSTON & BIRD, LLP
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
Tel.: (704) 444-1115
Fax.: (704) 444-1695
Email: jitty.malik@alston.com
Attorney for Plaintiff
Merial Limited

Of Counsel:

Judy Jarecki-Black, Ph.D.
MERIAL LIMITED
3239 Satellite Blvd.
Duluth, GA 30096-4640
Tel.: (678) 638-3805
Fax: (678) 638-3350
judy.jarecki@merial.com

Frank G. Smith, III
John W. Cox, Ph.D.
Matthew W. Howell
ALSTON & BIRD, LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Tel.: (404) 881-7000
Fax: (404) 881-7777
Email: frank.smith@alston.com
john.cox@alston.com
matthew.howell@alston.com

Deepro R. Mukerjee
ALSTON & BIRD, LLP
90 Park Avenue
New York, NY 10016-1387
Tel.: (212) 210-9501
Fax: (212) 922-3881
Email: deepro.mukerjee@alston.com

J. Patrick Elsevier, Ph.D.
JONES DAY
12265 El Camino Real, Suite 200

San Diego, CA 92130
Tel.: (858) 314-1200
Fax: (858) 314-1150
Email: jpelsevier@jonesday.com

Counsel for Merial Limited

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Daniel Alan M. Ruley, aruley@belldavispitt.com, William K. Davis, wdavis@belldavispitt.com, Christopher G. Kelly, christopher.kelly@hklaw.com, Steven L. D'Alessandro, steven.dalessandro@hklaw.com, Robert J. Burns, robert.burns@hklaw.com, Joshua C. Krumholz, Joshua.krumholz@hklaw.com, Jitendra Malik, jmalik@alston.com, John Patrick Elsevier, jpelsevier@jonesday.com, Matthew W. Howell, matthew.howell@alston.com, Judy C. Jarecki-Black, jduy.jarecki@merial.com, and Frank G. Smith, frank.smith@alston.com.

This the 12th day of July, 2011.

/s/ Robert T. Numbers, II

Pressly M. Millen (NCSB No. 16178)
Robert T. Numbers, II (NCSB No. 34134)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 755-2100
Facsimile: (919) 755-2150
Email: pmillen@wcsr.com
Email: rnumbers@wcsr.com

Attorneys for Plaintiffs
BASF Agro B.V., Arnhem (NL), Wädenswil Branch,
Bayer S.A.S., and Merial Limited

Of Counsel:

Kenneth A. Gallo
Craig Benson
Kent Kemeny
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
2001 K Street NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 223-7420
Email: kgallo@paulweiss.com
cbenson@paulweiss.com
kkemeny@paulweiss.com

John Nathan
Catherine Nyarady
Kripa Raman
Brian Egan
Jayson L. Cohen
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: jnathan@paulweiss.com
cnyarady@paulweiss.com
kraman@paulweiss.com
began@paulweiss.com
jlcohen@paulweiss.com

Of Counsel for BASF Agro B.V. , Arnhem (NL), Wädenswil Branch

Robert J. Koch
MILBANK, TWEED, HADLEY & MCCLOY LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
Telephone: (202) 835-7500
Facsimile: (202) 835-7586
Email: rkoch@milbank.com

Of Counsel for Bayer S.A.S.